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Commercial Transactions

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Commercial Transactions

Commercial Transactions; consumer credit contracts—security interests in household goods and personal property

Civil Code § 1799.100 (new).

AB 1344 (Areias), 1989 STAT. Ch. 525

Under existing law, a consumer credit contract¹ cannot grant a security interest² in religious materials³ worth less than \$500, unless the materials are specifically pledged as collateral.⁴ Chapter 525 extends existing law by making it unlawful to take a security interest in any household goods⁵ as collateral in a consumer credit contract,⁶ or under any other credit obligation that is acquired primarily for personal, family, or household purposes,⁷ unless the collateral is the item purchased through the contract, or the holder of the security interest takes actual possession of the collateral.⁸

1. See CAL. CIV. CODE § 1799.90(a) (West 1985) (definition of consumer credit contract).

2. See *id.* § 1803.2(3) (West 1985) (defining security interest).

3. Religious materials includes religious books and artifacts. *Id.* § 1799.97 (West 1985).

4. *Id.* Collateral means any household goods or personal articles that can be used as a security interest. 1989 Cal. Stat. ch. 525, sec. 1, at ____ (enacting CAL. CIV. CODE § 1799.100(f)(3)).

5. See 1989 Cal. Stat. ch. 525, sec. 1, at ____ (enacting CAL. CIV. CODE § 1799.100(f)(1)). Household goods are appliances, china, clothing, cookware, furniture, sheets and towels, wedding rings, and up to one radio and one television. *Id.* Household goods do not include antiques, artwork, electronic entertainment equipment (except one radio and one television), and jewelry (except wedding rings). *Id.* Antique means goods more than 100 years old. *Id.* (enacting CAL. CIV. CODE § 1799.100(f)(2)).

6. *Id.* (enacting CAL. CIV. CODE § 1799.100(a)).

7. *Id.* See *Talcott v. Gee*, 266 Cal. App. 2d 384, 386, 72 Cal. Rptr. 168, 170 (1968) (characterizing trial court's holding that equipment leased for lessee's personal use in a business was acquired for "personal, family, or household purposes," as an "untenable . . . semantical equivocation").

8. 1989 Cal. Stat. ch. 525, sec. 1, at ____ (enacting CAL. CIV. CODE § 1799.100(a)). Any agreement creating a security interest in household goods that were not purchased through the consumer credit contract, or that are not possessed by the creditor, is void and unenforceable. *Id.* (enacting CAL. CIV. CODE § 1799.100(d)). Compare 1989 Cal. Stat. ch. 525, sec. 1, at ____ (enacting CAL. CIV. CODE § 1799.100(a)-(f) with CAL. CIV. PROC. CODE § 704.020(a)-(c) (exempting household goods and personal items from seizure when a money judgment has been awarded by a court to an individual).

Under Chapter 525, agreements associated with consumer credit contracts that establish a security interest in personal property⁹ must describe each item of personal property that will serve as collateral.¹⁰ The statement describing the property must be signed by the debtor.¹¹ The security interest may be enforced only through judicial action, unless the property is abandoned or willfully relinquished by the debtor.¹² Persons injured by the unlawful taking of a security interest in household goods may sue for damages, equitable relief, and for attorney's fees and costs.¹³

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9. See CAL. CIV. CODE § 14(3) (West 1982) (definition of personal property).

10. 1989 Cal. Stat. ch. 525, sec. 1, at ____ (enacting CAL. CIV. CODE § 1799.100(b)). A security interest taken in property not described in the statement signed by the debtor is void and unenforceable. *Id.* (enacting CAL. CIV. CODE § 1799.100(d)).

11. *Id.* (enacting CAL. CIV. CODE § 1799.100(b)).

12. *Id.* (enacting CAL. CIV. CODE § 1799.100(c)).

13. *Id.* (enacting CAL. CIV. CODE § 1799.100(e)).

Commercial Transactions; delivery time requirements

Civil Code § 1722 (new).

SB 101 (Lockyer); 1989 STAT. Ch. 1075

Support: Consumers Action; Consumers Against Unregulated Cable Utility Services

Opposition: Furniture Market; State TV Cable; Post-Newsweek Cable; Pacific Cable Television; CableVision; California Chamber of Commerce; Public Utilities Commission; California Cable Television Association; Sonic Communications; Viacom Cablevision; King Videocable Company; Direct Selling Association; Wright & Company; United Cable Television; GTE California Incorporated; Southern California Gas Company; American Cablesystems of California, Inc.; Century Cable; Weststar Cable Television; Comcast Cablevision Corporation of California; City of San Diego; Pacific Telesis; California Retailers Association; UA Cablesystems of California; Cox Cable of San Diego, Inc.; Continental Cablevision; Quarte Cable Communications; North Coast Builders Exchange, Inc.; Builders Exchange Legislative Network; Wester Cabled Systems; County Supervisors Association of California;

Chapter 1075 requires retailers of merchandise and representatives of cable television companies and utilities who are making deliveries

or performing services for their clients to specify a four-hour period within which the delivery will be made or the service performed.¹ If the delivery or service does not occur within that four-hour period, the consumer may bring suit against the retailer or service company in small claims court.² If the retailer or service representative could not arrive within the time agreed upon because of unforeseen or unavoidable circumstances, or if the consumer was not present at the time agreed upon, then no action may be brought.³ The consumer may bring an action only for lost wages, expenses actually incurred, or other actual damages not to exceed the sum of \$500.⁴

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1. 1989 Cal. Stat. ch. 1075, sec. 1, at ____ (enacting CAL. CIV. CODE § 1722). This requirement only holds in situations where the parties have agreed that the presence of the consumer is required. *Id.* (enacting CAL. CIV. CODE § 1722(a)(1)).

2. *Id.* (enacting CAL. CIV. CODE § 1722(a)(2)). In the small claims suit, business records or logs kept by the retailer or service company may be used as prima facie evidence showing that the party was present at the time specified. *Id.* (enacting CAL. CIV. CODE § 1722(a)(4)). A diligent attempt to notify the consumer of the delay due to unforeseen or unavoidable circumstances, an attempt to deliver or service within two hours of a newly agreed upon time, and the consumer's unreasonable refusal of the service or delivery will all serve as defenses to the action. *Id.* (enacting CAL. CIV. CODE § 1722(a)(5)).

3. *Id.* (enacting CAL. CIV. CODE § 1722(a)(3)).

4. *Id.* (enacting CAL. CIV. CODE § 1722(a)(2)).

